

**Ben G. Almond**  
Executive Director-  
Federal Regulatory

October 15, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

RE: CC Docket 96-152 Implementation of the Telecommunications Act of  
1996 Telemessaging, Electronic Publishing and Alarm Monitoring Services

Dear Mr. Caton:

The attached document represents additional information and a follow-up discussion to the ex parte held by representatives of the BellSouth Corporation and FCC staff on September 26, 1996. Notification of this ex parte which relates to the above referenced proceeding was dutifully filed with your office on September 26, 1996.

Please associate this notification and accompanying document with the docket proceeding. The document addresses permissible joint marketing activities and restrictions for the provision of print directory products and electronic publishing services by the specified affiliates of BellSouth Corporation.

If there are any questions concerning this material, please contact the undersigned.

Sincerely,



**Ben G. Almond**  
Executive Director-Federal Regulatory

Attachment/Enclosure

cc:	Richard Welch	John Nakahata
	Carol Matthey	Lauren J. "Pete" Belvin
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Date: October 15, 1996

Re: Electronic Publishing

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The electronic publishing restrictions of Section 274 of the Telecommunications Act should not be construed to preclude joint promotion of print directory products by a BOC and its affiliates, notwithstanding the fact that such an affiliate may share some resources with an electronic publishing affiliate that is in compliance with Section 274(b). This conclusion relies on both an analysis of the statute and an assessment of the policy which Congress was intending to address in the Act.

I. First, Section 274(c) pertaining to "joint marketing" contains at subsection "(1)" two prohibitions. The first is that a BOC is prohibited from conducting joint marketing or promotional activity as regards a "separated affiliate". That term "separated affiliate" is defined at Section 274(i)(9) essentially as an entity which, inter alia, "engages in the provision of electronic publishing which is disseminated by means of" a Bell operating company. A BOC affiliate which is not owned or controlled by a BOC, and does not own or control a BOC, and does not engage in electronic publishing as defined in the Act, would not fall within the definition of the term "separated affiliate". Such an entity would be free to do joint marketing of print media products with an affiliated BOC without running afoul of the joint marketing restrictions. This describes BellSouth Advertising and Publishing Company (BAPCO) which markets print media yellow and white page directories and which is separate from the affiliated BOC in that it shares no assets, employees, directors or liabilities with that BOC. Moreover, it does not provide electronic publishing, although it does contract to provide some services to a separate Section 274(b) affiliate that is engaged in electronic publishing. Additionally, BAPCO may joint market its print directory products in conjunction with the electronic directory products of its affiliated electronic publishing company.

The joint marketing prohibition of Section 274(c)(b)(1) would also not apply to BAPCO. That prohibition pertains only to joint marketing done by a BOC in conjunction with an affiliate when such marketing is "related to the provision of electronic publishing". Promotion or marketing of the print product produced by BAPCO clearly falls outside of that category because it does not involve the provision of electronic publishing. As such, there is no prohibition against the BellSouth BOC conducting joint marketing activities of print media in conjunction with BAPCO.

II. Secondly, this result is consistent with the policy objective which Congress was trying to achieve. Congress sought through the restrictions of Section 274 to effect a structural and operational separation between a BOC and its electronic publishing affiliate. The focus in the definition of a "separated affiliate" at Section 274(i)(9) is on dissemination "by means of such Bell operating companies...basic telephone service". This demonstrates that the concern was with a perceived capability to use landline telephony service to improperly somehow favor services of the electronic publishing affiliate. Such conduct was perceived as potentially disadvantaging electronic publishing competitors using the same BOC network. No similar potential for any unfair advantage exist with respect to the print product. Print media competitors have access to the same tariffs under which BellSouth Advertising and Publishing Company gets its telephony service from the affiliate operating company. The listing information used in the print media is likewise available under tariff to competing directory publishers. Moreover, Congress was aware that

BOCs have historically conducted joint marketing programs with affiliated print directory publishers and because this activity presented no potential for any alleged monopoly abuse of the basic network Congress evidenced no intention to change or interfere with that activity.

Finally, Section 274 contains no prohibition against either the print media directory company nor the electronic publishing company marketing products or services of an affiliated BOC. Rather the restrictions of subsection "c" operate against activity by the affiliated BOC as regards electronic publishing. Thus, it is clear that a print media affiliate or the electronic publishing affiliate of a BOC could under Section 274 market the products or services of that BOC.